Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

REPLY COMMENTS OF SPRINT CORPORATION ON THE JOINT BOARD RECOMMENDED DECISION

Sprint Corporation, on behalf of its local, long distance, and wireless operations ("Sprint"), submits its reply comments on the Notice of Proposed Rulemaking and on the Joint Board Recommended Decision regarding the designation of Eligible Telecommunications Carriers ("ETCs"), the scope of universal service support, and related issues. 1/

Sprint, as a net contributor to the universal service fund and as a wireline and wireless ETC, strongly supports competitively neutral measures to limit the growth of the high-cost universal service fund but permit competitive participation. For example, the Joint Board's recommendation to impose a per-line cap upon high-cost support disbursements upon competitive entry 2/ would be an

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1/ *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004) ("*NPRM*"); *Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4257 (Joint Board 2004) ("*RD*").

2/ *RD*, ¶¶ 77-80.

effective short-term measure toward that end, pending broader reforms to the high-cost universal service program. 3/

However, as set forth in Sprint's initial comments in this proceeding and reinforced in the comments of many other parties, most of the Joint Board's other proposals will not achieve the objective of limiting fund growth in a competitively neutral manner. Restricting support to so-called "primary lines" would not be an effective policy, since it would be virtually impossible to implement and would be highly susceptible to "waste, fraud, and abuse." 4/ Moreover, such a restriction would not be competitively neutral, since each of the Joint Board's proposals would substantially restrict competitive ETCs while having no initial

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3/ *See* Sprint Comments at 8-10; *accord*, AT&T Comments at 17-24; CTIA Comments at 22-23; Dobson Comments at 28; GCI Comments at 28-32; NASUCA Comments at 33; Regulatory Commission of Alaska Comments at 9; Verizon Comments at 18-19; Western Wireless Comments at 18 & Exh. B at 2.

4/ USAC Comments at 8-9. Notably, USAC cogently discusses the definitional complexities that would make this proposal so difficult to implement. *See id.* at 6-7 ("Would a consumer be the named individual on a telephone bill? Alternatively, would a consumer be defined by a unique identifier, such as a social security number? Moreover, could there be multiple consumers within a single residence and, if so, how many primary lines could be designated for a single address? For example, more than one family may live in a single home, with each family having its own separate telephone service. Would each of those families be considered a consumer and therefore eligible to designate a primary line for purposes of universal service? If not, who would have the authority to make the primary line designation for the address? Would it be the first individual to submit the primary line selection to its carrier of choice, or would it be the last individual to make that election? Depending on the answers to the above questions, USAC may need to collect customer-specific information for each line served by rural ILECs and the CETCs that serve in their study areas . . . . Without information such as name, address, and possibly some other unique identifier, the primary line selection process has the potential to raise serious issues of waste, fraud, and abuse."). USAC also discusses other administrative hurdles, including need for substantially additional resources for USAC to collect, validate, and audit customer-specific information, potentially from individual consumers, that would make it extremely difficult and extraordinarily costly to implement the Joint Board's primary line proposal. *See generally id.* at 6-14.

impact on incumbent local exchange carriers ("ILECs"). 5/ It is highly questionable whether any new ETC guidelines or standards are needed to introduce "rigor" into a designation process that is already amply rigorous – and since competitive ETCs are not the primary driver of funding growth, such policies would be of marginal value in restraining the growth of the fund. 6/

Given the immense size of the record in this proceeding, Sprint will rely on its initial comments and will forego responding to every contrary argument. Instead, these reply comments focus on two new proposals offered in certain parties' comments: (1) the proposal offered by OPASTCO, RICA, and RTG to limit the amount of support available to wireless ETCs, and to eliminate portable support for relatively large wireless carriers such as Sprint; and (2) AT&T's and Verizon's new proposals to impose draconian presumptions against designation of competitive ETCs in areas served by rural ILECs.

The Commission Should Reject the OPASTCO/RICA/RTG Proposal. 7/

The Commission should reject this proposal for three reasons: (1) it is beyond the scope of the Notice of Proposed Rulemaking in this proceeding; (2) the proposal

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5/ Sprint Comments at 9-10, 14-17. *Accord*, CTIA Comments at 14; Dobson Comments at 19; Nextel Partners Comments at 10; Western Wireless Comments at 19.

6/ Sprint Comments at 20-34. *See also* CTIA Comments at 6 (funding to rural ILECs accounts for the great majority of high-cost fund growth); *accord*, Dobson Comments at 27; Nextel Communications Comments at 10; Nextel Partners Comments at 22; Western Wireless Comments at 16.

7/ These proponents mischaracterize their plan as a "hard fought negotiated consensus" among groups with disparate interests; but in reality the three groups represent small rural ILECs, CLEC affiliates of small rural ILECs, and wireless carriers that are largely affiliates of small rural ILECs. OPASTCO/RICA/RTG Comments at 1 n.1.

would violate the Communications Act, as interpreted by the Courts of Appeals; and (3) the proposal would move universal service policy in precisely the wrong direction.

First, the OPASTCO/RICA/RTG plan regarding the basis for computing support payments to competitive ETCs is beyond the scope of the current proceeding. The Joint Board considered such issues but did not adopt any recommendations, and concluded that, to "avoid the perils of piecemeal decision-making," the basis of support for competitive ETCs should be considered in the broader context of the basis of support for all ETCs in the Rural/Non-Rural Review proceeding. 8/ Consistently, in the *NPRM*, the Commission pointedly declined to seek comment on the basis of support. At this point, the Commission is precluded from adopting rule changes relating to the basis of support for competitive ETCs. 9/

Second, the OPASTCO/RICA/RTG proposal to disburse 100% support to rural ILECs and 0% support to national wireless ETCs like Sprint that serve the same areas (or gradually increasing percentages for smaller wireless ETCs) would radically depart from portability and competitive neutrality requirements, in violation of the Communications Act. "[P]ortability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the

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8/ *RD*, ¶ 95.

9/ *See Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003). *See also RD*, Separate Statement of Commissioners Jonathan Adelstein, Nanette Thompson, and Bob Rowe, Approving in Part, Dissenting in Part, at 68 ("We are disappointed that the Joint Board did not make greater progress on the issue of the basis of support. . . . We understand that our record does not support a final decision on how we would fairly administer support based on the competitors' costs.").

statutory command [of Section 254(e)]." 10/ Indeed, the Commission has held that mechanisms like the OPASTCO/RICA/RTG plan, which "provide support to ILECs while denying funds to eligible prospective competitors," effectively constitute barriers to entry, in violation of the Act. 11/

Moreover, the plan cannot be saved by giving competitive ETCs the opportunity to receive additional support by making a cost showing. Such an approach, in effect disbursing different amounts of support to ILECs and competitive ETCs serving identical geographic areas based on each carrier's reported costs, would create perverse incentives for carriers to operate in an inefficient manner. It also would violate competitive neutrality by giving a marketplace advantage, based on a higher amount of support per line, to the carrier with higher costs. Making things worse, OPASTCO/RICA/RTG propose to give such an advantage only to the ILEC, but if the competitive ETC's costs are higher, its support would be capped at the level received by the ILEC (or the statewide average support level). 12/ Such a restriction blatantly violates competitive neutrality.

OPASTCO/RICA/RTG recognize that "for non-ILECs to qualify for comparable support it will be necessary to establish cost study methodologies that

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10/ *Alenco Communications Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000).

11/ *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, As Amended*, 15 FCC Rcd 16227, ¶ 8 (2000).

12/ OPASTCO/RICA/RTG Comments at 13-14.

produce similar results to ILEC cost studies." 13/ But no such methodology currently exists, and there are no "generally accepted accounting principles" 14/ that provide any guidance for how wireless carriers would develop a cost study comparable to those used by ILECs. Conditioning support on compliance with a non-existent cost study standard does not satisfy the criteria of "predictability" or "competitive neutrality." 15/

Finally, the OPASTCO/RICA/RTG proposal would move universal service policy in precisely the wrong direction. The current high-cost support program is deeply flawed by the fact that different types of carriers serving identical types of customers in comparable geographic areas receive radically different amounts of support: small ILECs often receive substantially more support than larger ILECs serving rural areas with similar or identical cost characteristics. While some variation in support may be justified by company size affecting costs (volume discounts, etc.), the dramatic differences in support we currently see are

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13/ *Id.* at 12.

14/ *Id.* at 13.

15/ To be sure, wireless carriers and other non-ILECs have the *option* of conducting a cost study to justify asymmetrical rates for reciprocal compensation based on their own costs. *See* Letter to Charles McKee, Sprint PCS, from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy T. Attwood, Chief, Common Carrier Bureau, 16 FCC Rcd 9597 (WTB & CCB, 2001); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16040, ¶ 1085 (1996), *subsequent history omitted*; *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, ¶ 104 (2001). But it is far less burdensome and less problematic to *permit* non-ILECs to develop and try to justify such cost studies (while assuring them of compensation whether or not they attempt to do so) than, as OPASTCO/RICA/RTG propose, to tell carriers that they will receive zero (or very substantially reduced) support amounts *unless* they can develop and justify cost studies – while providing no defined standard for such studies.

attributable to a combination of using costs incurred under rate of return regulation, different approaches to averaging, and the assumption that larger companies are able to implicitly subsidize higher cost areas with lower cost regions. As the Commission and the courts have noted, implicit subsidies are inconsistent with competitive markets, 16/ but the OPASTCO/RICA/RTG plan perpetuates these assumptions. Ultimately these issues will need to be resolved. Yet the OPASTCO/RICA/RTG plan would make matters worse by creating distinctions between the amounts of funding to which different *wireless* ETCs would qualify, based on the size of their holding companies. The Commission should decline to adopt a policy that creates (or intensifies) incentives for carriers to avoid achieving scale economies in order to maximize one's support. Such a policy would reward relative inefficiency.

The Commission Should Decline to Establish Presumptions Against ETC Designation. AT&T, picking up on a proposal offered by Joint Board member Billy Jack Gregg, argues for establishing a national "presumption" against designation of competitive ETCs in areas where rural ILECs receive support above what AT&T characterizes as a "low national benchmark." 17/ Verizon goes further and contends that the Commission should establish a presumption that it is not in

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16/ *See, e.g., Comsat Corp. v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001) ("the FCC cannot maintain any implicit subsidies whether on a permissive or mandatory basis").

17/ AT&T Comments at 25-26; *see RD*, Separate Statement of Billy Jack Gregg, Director of the Consumer Advocate Division, Public Service Commission of West Virginia, at 59.

the public interest to designate competitive ETCs in _all_ areas served by rural ILECs. 18/

The Commission should reject these proposals, as the Joint Board recommended: "we decline to adopt specific benchmarks based on per-line support to guide the states' public interest determinations. We are concerned that any benchmark we recommend would be arbitrary." 19/ Arbitrary indeed: given the arbitrariness of the formulas that determine the per-line support currently received by rural ILECs, it would compound the arbitrariness to deny ETC status to competing carriers based on such benchmarks. As CTIA points out, "this proposal would create powerful and perverse incentives for incumbent carriers to inflate their costs in order to deny competitors access to high-cost subsidies. In an increasingly competitive market, it is completely inappropriate for incumbent carriers to be monetarily rewarded for being inefficient." 20/

Moreover, any presumption against ETC designation would be contrary to Section 214(e) of the Act, which establishes no such presumptions. The Fifth Circuit Court of Appeals has already rejected a prior Commission effort to create similar presumptions, and has clarified that to "impose[ ] such onerous eligibility requirements that no otherwise eligible carrier could receive designation . . . would probably run afoul of § 214(e)(2)'s mandate to 'designate' a

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18/ Verizon Comments at 9-14.

19/ *RD*, ¶ 44.

20/ CTIA Comments at 13.

carrier . . . ." 21/ Where the statute specifically directs an agency to take an action if certain criteria are satisfied, the agency does not have authority to establish a rebuttable presumption *against* taking that action. 22/ Finally, use of such presumptions as "shortcuts" overlooks the fact that designation of wireless carriers as ETCs often provides major benefits to consumers and substantially advances the public interest. 23/

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In conclusion, for the reasons discussed above and in Sprint's initial comments in this proceeding, the Commission should adopt competitively neutral measures to limit funding growth, such as per-line caps on fund growth in competitive study areas, but should reject proposals such as primary line restrictions and improper new ETC designation criteria that would thwart competition and would not effectively address the real causes of fund growth.

21/ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 & n.31 (5th Cir. 1999). In that case the court reversed what in effect was a presumption *in favor* of designating competitive ETCs. *Id.* at 417-48.

22/ *See American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 771 (D.C. Cir. 1987) (vacating OPM regulation establishing a presumption that "appears to guide or direct the agency to act inconsistently with the [statute] and places an unwarranted and, at minimum, confusing burden on the employee").

23/ *See* Sprint Comments at 7-8 (public interest and consumer benefits of designating wireless ETCs); *accord*, CTIA Comments at 2-5; U.S. Cellular Comments at 23-29; Western Wireless Comments at 8-15.

Respectfully submitted,

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